

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Federal-State Joint Board on |) | CC Docket No. 96-45 |
| Universal Service |) | |

ORDER

Adopted: August 26, 1998

Released: August 27, 1998

By the Chief, Common Carrier Bureau:

1. On November 12, 1997, the Minnesota Public Utility Commission (Minnesota Commission) filed a request for a temporary waiver until August 1, 1998¹ of the Commission's rule requiring that states that provide Lifeline support must establish consumer qualification criteria that is based solely on income or on factors directly related to income.² On December 30, 1997, the Common Carrier Bureau (Bureau) granted the Minnesota Commission's request for a temporary waiver so that current Lifeline consumers in Minnesota would receive uninterrupted federal support pending legislative changes necessary to conform Minnesota's eligibility criteria to our rules.³ In this Order, we address the status of Minnesota's Lifeline consumer qualification criteria and conclude that consumers in Minnesota who satisfy the federal default consumer qualification established in section 54.409(b) of the Commission's rules are eligible to receive the baseline amount of federal Lifeline support.

2. On May 8, 1997, the Commission issued a Report and Order that revised our rules governing consumer qualification for federal Lifeline support and the federal Lifeline support amount.⁴ In revising these rules, the Commission sought generally to make Lifeline and Link Up available to low-income consumers in every state and territory in the nation. The

¹ Minnesota Public Utilities Commission Request for Waiver, CC Docket 96-45 (Nov. 12, 1997) (Minnesota Commission Waiver Request).

² 47 C.F.R. § 54.409(a).

³ Federal-State Joint Board on Universal Service, *Order*, CC Docket No. 96-45, DA 97-2478 (Com. Car. Bur. rel. Dec. 30, 1997) (*Lifeline Waiver Order*).

⁴ Federal-State Board on Universal Service, Report and Order, CC Docket No. 96-45, FCC 97-157, 12 FCC Rcd 8776 (rel. May 8, 1997). The Commission released an erratum correcting the *Universal Service Order* on June 4, 1997.

revised rules specify that states that provide Lifeline support shall establish consumer qualification criteria that is based solely on income or on factors directly related to income.⁵ To qualify to receive federal Lifeline support in states that do not provide state Lifeline support, a consumer must certify that he or she satisfies the federal default criteria, *i.e.*, participates in one of the following programs: Medicaid; food stamps; Supplemental Security Income; federal public housing assistance; or Low-Income Home Energy Assistance Program.⁶ The revised rules also provide for three forms of federal Lifeline support: (1) \$3.50 per qualifying low-income consumer; (2) an additional \$1.75 if the state commission approves a reduction of \$1.75 in the intrastate rate paid by Lifeline consumers; and (3) additional support, subject to a \$7.00 ceiling on the total amount of federal Lifeline support, if the state provides intrastate Lifeline support to customers based solely on income or factors directly related to income.⁷

3. In its waiver request, the Minnesota Commission explained that Minnesota state law required that the consumer qualification criteria for its state Lifeline program, called the Telephone Assistance Program (TAP), must be based on both income and age or disability and thus did not qualify as a Lifeline program under federal rules.⁸ The Minnesota Commission stated that the Minnesota legislature would begin its 1998 legislative session in February, and any changes in legislation that bring TAP's consumer qualification criteria into compliance with Commission rules likely would not become effective until August 1, 1998.⁹ In our *Lifeline Waiver Order*, we found that good cause existed to waive our rule until August 1, 1998 so that consumers in Minnesota who were eligible for low-income assistance at that time continued to benefit from federal Lifeline support and did not experience temporary disruption in their local rates between January and August.¹⁰

⁵ 47 C.F.R. § 54.409(a).

⁶ 47 C.F.R. § 54.409(b).

⁷ 47 C.F.R. § 54.403. The third form of federal Lifeline support comes in an amount equal to one-half the amount of any state Lifeline support will be made available to the carrier providing Lifeline service to a qualifying low-income consumer if the state approves an additional reduction in the amount paid by that consumer equal to the state support multiplied by 1.5. The federal Lifeline support amount shall not exceed \$7.00 per qualifying low-income consumer.

⁸ Minnesota Waiver Request at 1.

⁹ Minnesota Waiver Request at 2.

¹⁰ See *Lifeline Waiver Order* at para. 12.

4. The Minnesota Commission has informed the Commission that the consumer qualification criteria for TAP has not been brought into compliance with section 54.409(a).¹¹ The Minnesota Commission also reports in its July 17 letter, however, that, pursuant to authority granted to it by state law, it has adopted the federal default consumer qualification criteria.¹² The Minnesota Commission maintains, therefore, that consumers in Minnesota who meet the federal default criteria should be eligible to receive the baseline level of federal Lifeline support, *i.e.*, \$5.25.¹³ The Minnesota Commission asserts that consumers who satisfy both the federal default criteria and TAP's limited eligibility criteria should be eligible to receive \$5.25 in federal support,¹⁴ but that consumers participating in TAP will no longer receive the additional \$1.75 in federal support that is available when a state provides funds to customers based solely on income or factors directly related to income.¹⁵

5. We concur with the Minnesota Commission's assertion. We find that, in adopting the federal default consumer qualification criteria, the Minnesota Commission has complied with our rules in section 54.409(a).¹⁶ We also find that it would be unfair to consumers in Minnesota who meet the federal default criteria to deny the \$5.25 in federal baseline support that is available to similarly-situated consumers in states that do not provide any Lifeline support. Thus, we conclude that consumers in Minnesota who satisfy the federal default consumer qualification criteria will be eligible to receive \$5.25 in federal Lifeline support per qualifying low-income consumer. Minnesota remains free, of course, to continue to provide state support to the more limited class of consumers eligible for TAP (*i.e.*, low-income consumers who also meet age or disability criteria). Because TAP does not comply with section 54.409(a) of our rules, however, participants in that program will not be eligible to receive the additional \$1.75 in federal support that is available to states that comply with section 54.403(a) of the Commission's rules. We further conclude that, because the waiver expired August 1, 1998, only the federal Lifeline support amount of \$5.25 per eligible consumer per month should be provided as of August 1, 1998.

¹¹ Letter from Edward A. Garvey, Minnesota Public Utilities Commission, and Jim Alan, Minnesota Department of Public Service, to William E. Kennard, FCC, dated July 17, 1998 (*July 17 letter*). (Because the July 17 letter did not contain a docket number, the letter was resubmitted on July 29, 1998 with the appropriate docket number.)

¹² *Id.* at 2.

¹³ *Id.* at 3.

¹⁴ *Id.* at 3.

¹⁵ *Id.* at 3.

¹⁶ In an Order released on March 2, 1998, the Bureau reached the same conclusion with respect to the status of Arizona's Lifeline consumer qualification criteria. *See* Federal-State Joint Board on Universal Service, *Order*, CC Docket No. 96-45, DA 98-113 (Com. Car. Bur. rel. March 2, 1998).

6. It is THEREFORE ORDERED, pursuant to sections 4(i), 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, and 254 and sections 0.91, 0.291, 1.3, and 54.409 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.409 that consumers in Minnesota who satisfy the federal default Lifeline consumer qualification criteria may receive the baseline level of federal Lifeline support (*i.e.*, \$5.25 per month).

FEDERAL COMMUNICATIONS COMMISSION

Kathryn C. Brown
Chief, Common Carrier Bureau